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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No.

CITY OF PHOENIX, ARIZONA, et al.,

Appellant,

vs.

EMILY. KOLODZIEJSKI,

Appellee.

On Appeal from the United States District Court
for the District of Arizona

BRIEF FOR POUDRE SCHOOL DISTRICT R-1, LARIMER COUNTY, COLORADO, AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

In accordance with U. S. Sup. Ct. Rule 42 (4), this brief is filed on behalf of and is sponsored by the legal representative of Poudre School District R-1, Larimer County, Colorado, a political subdivision of the State of Colorado.

Pursuant to proper procedures of the District Board of Education, a school bond election was properly held in the District on October 14, 1969. At that election the question of issuing general obligation bonds in the amount of $18,500,000 was submitted to the qualified taxpaying electors of the District only, in accordance with Article XI, Section 7

of the Constitution of Colorado, and as defined by Colorado Revised Statutes 1963, 1965 Perm. Cum. Supp. 123-11-1 (4). The results of said election were duly canvassed and certified at a meeting of the Board on October 15, 1969, such certification showing that there were 3,282 votes for the bonds and 2,547 votes against the bonds.

A public sale of a portion of the bonds so authorized was scheduled and advertised for December 8, 1969. Because of the decision of the trial court in this cause entered on November 17, 1969, great uncertainty was cast on the validity of bonds so authorized by taxpaying electors only, and the bond sale was cancelled.

In holding certain sections of the Arizona constitution and bond laws violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, the court below relied on the rules set down in *Cipriano* v. *City of Houma,* 395 U.S. 701, 89 S.Ct. 1897 (1969), and *Kramer* v. *Union Free School District,* 395 U.S. 621, 89 S.Ct. 1886 (1969). The court below made no distinction between an election authorizing revenue bonds (*Cipriano*) and general obligation bonds.

Furthermore, the trial court gave its decision retrospective effect by making it apply from June 16, 1969, the date of the *Cipriano* decision. This retrospective effect casts doubt on the validity of general obligation bonds authorized solely by taxpaying electors at all elections held between June 16, 1969 and November 17, 1969, the date of the decision below.

The Poudre R-1 School District's interest lies in the dire need to construct and equip adequate school buildings for its children. It has followed the only statutoritly available procedure to provide for such buildings by authorizing payment from the proceeds of its general obligation bonds. The

bonds, however, at this time, are not saleable. To this end, the District urges this court to take jurisdiction and make a prompt decision in the matter.

STATEMENT OF THE CASE

The School District feels the statement of the case made by the City of Phoenix, Arizona, the Appellant herein, is adequate and so adopts the same.

ARGUMENT

Colorado constitutional and statutory provisions applicable to the School District's problem are, in pertinent part, set forth as follows:

Colorado Constitution - Article XI, Section 7. Debt for school buildings - how created.

> "No debt by loan in any form shall be contracted by any school district for the purpose of erecting and furnishing school buildings, or purchasing grounds, unless the proposition to create such debt shall first be submitted to such qualified electors of the district as shall have paid a school tax therein, in the year next preceding such election, and a majority of those voting therein shall vote in favor of incurring such debt."

Colorado Revised Statutes 1963, 1965 Perm. Cum. Supp., 123-11-3. Bonded indebtedness - elections - districts of seventy thousand or less enrollment.

> "(1) The board of education of any school district with a school enrollment of seventy thousand or less, at any regular biennial school election or at a special election called for the purpose, may submit to the registered qualified taxpaying electors of the district the question of contracting a bonded indebtedness for the purpose of purchasing grounds, or for erecting and furnishing school buildings, or for funding floating indebtedness, or for any one or more of said purposes, which purposes shall be broadly construed, subject to the limitations provided in section 123-11-4."

Colorado Revised Statutes 1963, 1965 Perm. Cum. Supp., 123-11-1. Definitions.

"(4) 'Taxpaying elector' and 'qualified taxpaying elector' mean any person who is at least twenty-one years of age, a citizen of the United States, and who has resided in the state for twelve months, in the county for ninety days, in the school district thirty days, and in the school election precinct fifteen days immediately preceding the election at which he offers to vote, and who, during the twelve months next preceding said election, has paid an ad valorem school tax upon property situated within the school district and owned by said person; and the term 'registered qualified taxpaying elector' means a qualified taxpaying elector who has registered pursuant to the requirements of section 123-11-10."

The School District's bonds were authorized in compliance with the quoted Colorado Constitution and Statutes at an election held on October 14, 1969. The bonds are payable from general ad valorem taxes on all taxable property in the District. The bonds, however, are not marketable because of the decision of the court below rendered on November 17, 1969.

This Court in *Cipriano* was careful not to make its decision retroactive. The court below, however, renders *Cipriano* retroactive as to general obligation bonds by adopting the date of the *Cipriano* decision, June 16, 1969, at the effective date of public awareness of the rule of law not only as to revenue bonds but also as to general obligation bonds. The court below has thus retroactively extended the effect of *Cipriano* to general obligation bonds beyond the apparent intention of this Court in its decision concerning revenue bonds.

On December 26, 1969 the Oklahoma Supreme Court rendered two decisions (*Tom Settle* v. *Board of County Commissioners of the County of Muskogee, State of Oklahoma, et al,* No. 43812 and *Tom Settle* v. *City of Muskogee, et al,* No. 43842) holding that Sections 27 and 35 of Article 10 of

the Oklahoma Constitution did not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by limiting the class of voters in bond elections (Section 35) and in elections to increase the City's bonded debt (Section 27) to qualified taxpaying electors. These decisions are in direct conflict with the decision of the court below, and they are also in conflict with *Cipriano* if the rule announced therein is extended to general obligation bonds.

The School District refers to and adopts the list of pending cases enumerated in the brief of the City of Tulsa, Oklahoma, as *Amicus Curiae*. In addition, a case is at issue in a court of original jurisdiction in Colorado Springs, Colorado, involving School District No. 11, El Paso County, Colorado, whereby the plaintiffs seek to invalidate an election to increase the general fund budget, on the grounds that the question was submitted to all qualified electors of the district rather than only to the qualified taxpaying electors as required by statute. *Myron H. Pike, et al v. School District No. 11, El Paso County, Colorado,* El Paso Colorado County Court No. 9069.

The legislature of Colorado convened on January 7, 1970, for its odd year, or "short" session and the Governor has placed on the legislative agenda certain amendments to the laws which attempt to deal with the problems raised by *Kramer, Cipriano* and the decision of the court below, in so far as these problems relate to a constitutionally acceptable limitation of a class of voters authorized to vote in general obligation bond elections. The legislature of New Mexico convenes during the week of January 12, 1970, and will likewise be struggling with the dilemma.

CONCLUSION

In order to remove the uncertainty surrounding the School District's bond election and resolve the question of the market-

ability of its bonds, and in order to lend guidance to other issuing public bodies, state and federal courts and state legislatures, the School District urges this court to take jurisdiction and render a prompt decision on a matter of great public concern.

Respectfully submitted,

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AFFIDAVIT OF SERVICE

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The undersigned, one of the counsel for Poudre School District R-1, Larimer County, Colorado, as Amicus Curiae, being first duly sworn upon oath deposes and says that a copy of the foregoing brief has been served on all counsel of record by depositing on this date copies thereof in the United States Air Mail, postage prepaid, addressed to each of them, at their respective addresses of record.

B. F. Napheys III

Subscribed and sworn to before me this 22nd day of January, 1970.

(Seal) Notary Public

My commission expires: September 8, 1972